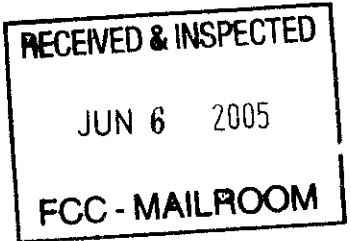


Express Mail EV 432181146 US

**Before the
Federal Communications Commission
Washington, D.C. 20554**



In the Matter of the Appeal of the)
Decision of the)
Universal Service Administrator by)
Brooks County Schools)
Federal-State Joint Board on)
Universal Service)
Changes to the Board of Directors of)
The National Exchange Carrier)
Association, Inc.)

File No. SLD -
DOCKET FILE COPY ORIGINAL

CC Docket No. 96 - 45

CC Docket No. 97 - 21

**Appeal
and
Demand for Expedited Relief**

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June 5, 2005

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W. Suite TW-A325
Washington, D.C. 20554

This is an appeal and request for expedited relief from a decision by the Schools and Libraries Division of the USAC to the Federal Communications Commission.

Enclosed are the original and four copies of the Appeal. An extra copy is also enclosed; please time stamp the extra copy and return it to me in the enclosed self addressed-stamped envelope.

(1) Funding Commitment Decision Letter Appealed

| | |
|--------------------------------|-----------------------|
| Form 471 Application Number: | 421062 |
| Funding Year 2004: | 07/01/2004-06/30/2005 |
| Billed Entity Number: | 127495 |
| Date of Funding Denial Notice: | May 24, 2005 |
| Date of Appeal: | June 5, 2005 |

(2) SLD Contact Information

Paul Watson
Technology Coordinator
Brooks County Schools
489 Barwick Road
Quitman, GA 31643
229.263.8606 phone

229.263.8856 fax

pwatson@brooks.k12.ga.us

(3) Funding Request Numbers Appealed

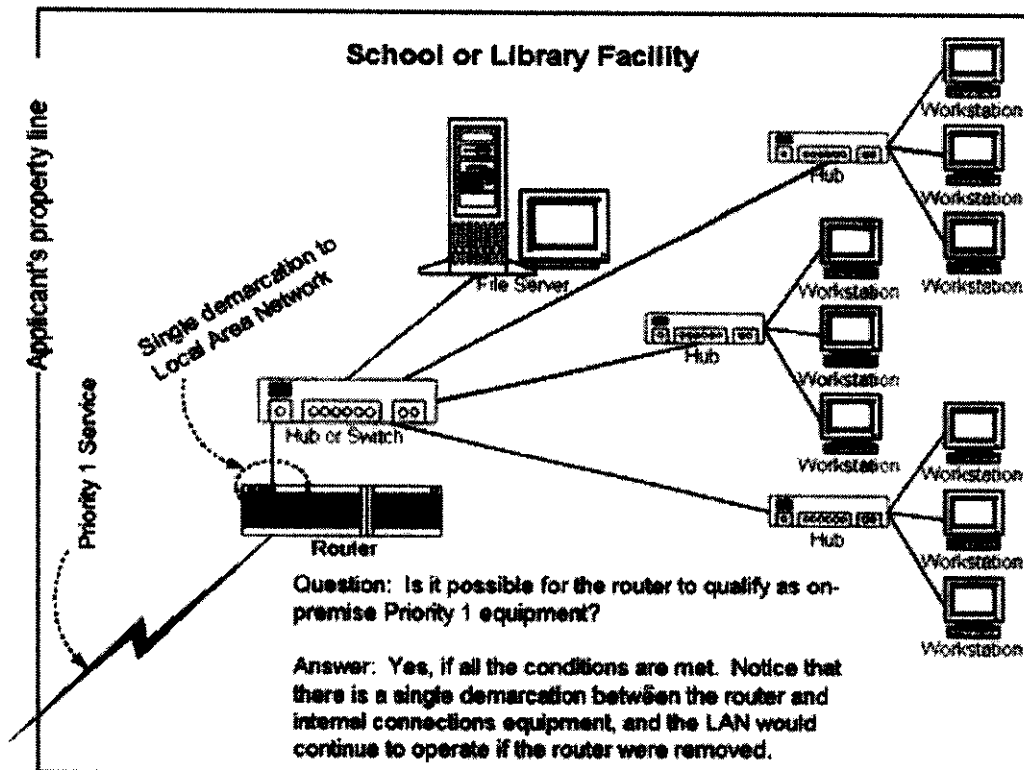
FRN – 1171562

(4) The SLD stated that funding is denied because:

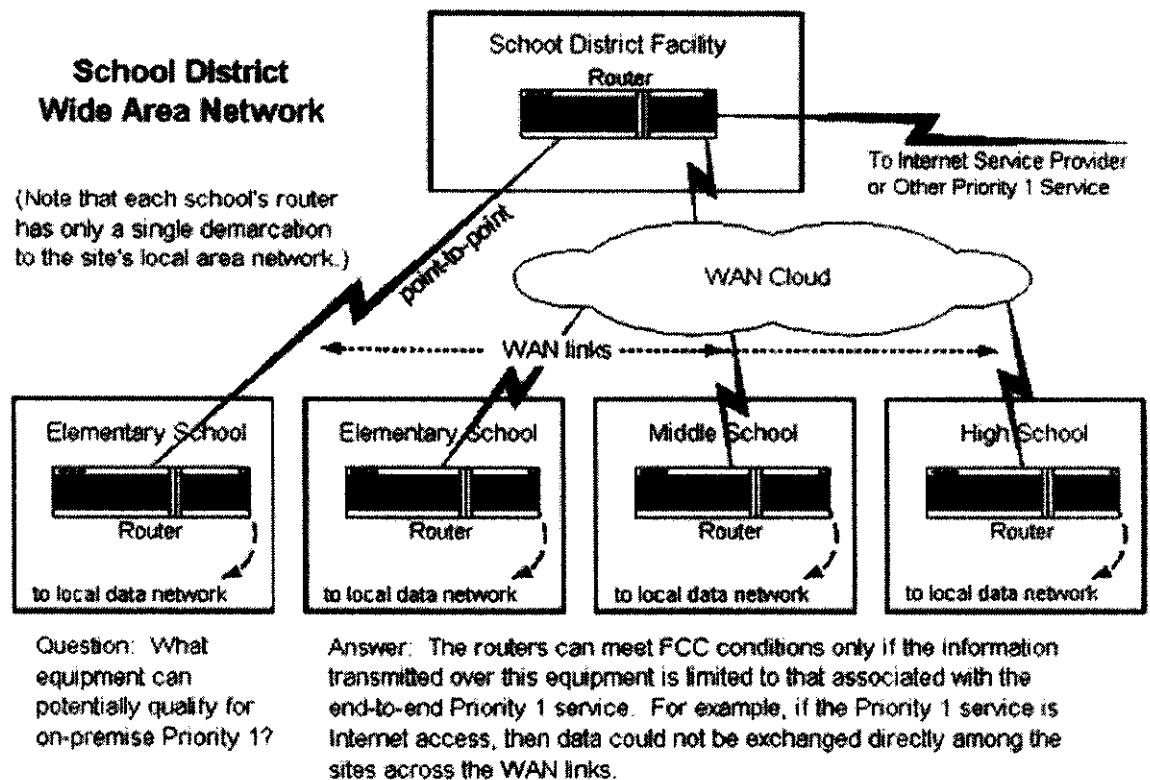
"The category of service was changed from Internet Access to Internal connections in accordance with program rules. 30% or more of this FRN includes a request for the purchase of a WAN which is an ineligible product (s)/service(s) based on program rules."

(5) The "30% rule" was incorrectly applied by the SLD

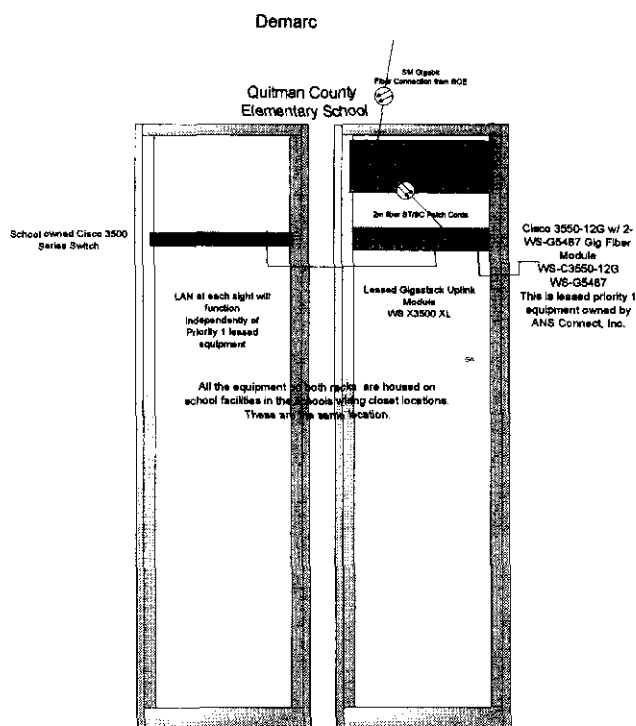
- a) Brooks applied for Internet Access service, a Priority 1 Service. The basis for Brook's Application is the SLD website. The SLD's website uses the following illustration for eligible funding for Priority 1 Internet Access service:



b) And, the SLD illustration for eligible WAN funding provides:



- c) The vendor, ANS Connect, provided diagrams of the Internet Access service that would be to Brooks. Except for more detail, the vendor provided diagrams are identical to the SLD diagrams¹.



The "demarc" is shown clearly; it's between Brooks on the "left", and the vendor on the "right."

- d) The SLD denied funding because (A) the vendor's on-premises equipment was allegedly owned by Brooks, and thus Internal connections. The evidence provided to the SLD does not support the SLD's conclusion. The following response was sent to the SLD clearly

¹ Except for the Board of Education building, this diagram is illustrative of all school buildings at Brooks. The Board building differs ONLY because it has a router. Exhibit A.

stating that on premises equipment for Internet Access was owned by the vendor.

"January 10, 2005

William F. Furniss
Associate Manager
Schools and Libraries Division
Phone: 973-428-7342
Fax: 973-599-6512

Dear William,

Per your request the following is the response to your questions regarding FCC Form 471 Application # 421062.

...

If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answers apply
(although ANS has on school district premise equipment included in this request it is NOT the equipment listed above for the on-premise equipment for Internet Access):

(Please refer to the attached diagrams from the vendor for the vendor owned on-premise equipment for FRN 1171562 on Application 421062.)

- 1.) *Is the leased on-premise equipment an integral component of a Telecommunications or Internet Access service?* **YES**
- 2.) *Will the leased on-premise equipment be provided by the same service provider that provides the associated Telecommunications Service or Internet Access service?* **YES**
- 3.) *Does responsibility for maintaining the equipment rest with the service provider?* **YES**
- 4.) *Will ownership of the equipment transfer to the school or library in the future?* **NO**
- 5.) *Does the relevant contract or lease include an option for the applicant to purchase the equipment?* **NO**
- 6.) *Will the leased equipment be used at the applicant site for any purpose other than receipt of the eligible*

Telecommunications Services or Internet Access of which it is a part? **NO**

Please note that the following two questions are limited to data communications functionality, and do not include technologies limited to traditional voice communication.

7.) Will the school's or library's internal data communications network function without dependence on the equipment?

YES

8.) Are there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise data communications equipment in part for other customers? **NO**

...

ITEM 2)

SLD Question:

Please provide a configuration diagram of the products and services proposed.

The diagram should include the on-premise equipment requested as a part of Internet Access or Telecommunications Services, and all other components, including Internal Connections, that directly connect to these components.

Response:

Regarding Application Number 421062, FRN 1117681 does not exist. If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answer applies:

Diagrams from the vendor are attached. All equipment showing (make and model) on the diagrams attached are on school district locations (as notated on each diagram).

HOWEVER, ALL equipment is vendor owned; including the on-premise equipment that is being leased by Brooks County School District from ANS Connect, Inc. to provide Internet Access service; and there is NO option to purchase the equipment."

...

Exhibit B

e) Moreover, even if the so-called SLD's "30%" rule is applied, the on premises equipment amounts to \$67,035.00 total for ALL buildings. Said differently, the non-recurring charge is \$348,000.00. ALL of the so-called vendor's on premises equipment cost is \$67,035.00. **This is not 30% of any charge (recurring or non-recurring) for Internet Access service. Even if you assume, *arguendo*, that the equipment is Brooks owned, and it is not, you still do not get to 30% of any cost.**

f)The SLD's website states²:

"Q8. The Wide Area Network (WAN) Fact Sheet indicates that up-front capital costs for Priority 1 services greater than \$500,000 must be amortized over at least three years. How are such requests evaluated when they include on-premise components as part of the Priority 1 service?

For requests that include on-premise Priority 1 equipment, first an evaluation is performed to determine if the requirements are met for a Priority 1 end-to-end service. Then the application is evaluated to determine if non-recurring costs are greater than \$500,000.

The \$500,000 threshold is evaluated on the basis of the same service provider, same applicant, and same "service package," e.g., videoconferencing, fiber installation, wireless WAN. Thus, PIA in complex cases could evaluate more than a single Funding Request or even more than a single application."

g) And, for authority, the Brooklyn Order³ clearly states that:

9. ...

² The SLD's website states at <http://www.sl.universalservice.org/reference/wan.asp>

³ File No. SLD-149423, CC Docket No. 96-45, CC Docket No. 97-21, adopted, Sept 25; Rel. Sept 26, 2000

"SLD acknowledged that the Commission has recognized in the *Tennessee Order* that some infrastructure costs may be passed on as a component of service charges.

...

12. More specifically, as an initial matter, we reaffirm the principle set forth in the *Tennessee Order* that universal service funds may be used to fund equipment and infrastructure build-out associated with the provision of eligible services to eligible schools and libraries. We conclude, therefore, that our rules and Commission precedent do not bar eligible schools and libraries from seeking universal service funding for costs for infrastructure investment associated with the provision of telecommunications services, provided that: (1) the specific services and uses of those services are eligible for universal service funding; and (2) the costs for service to be provided over shared-use infrastructure are properly allocated so that the fund only pays for the costs associated with providing services to the eligible schools or libraries.³⁴ This conclusion, however, does not resolve the issue of how or in which manner the fund may pay for such infrastructure investment, given the facts before us.


Conclusion:

Brooks is Requesting the Following Action by the FCC:

- (a) There is no violation of the 30% rule; all the equipment was vendor owned, and is used solely for the provision of Internet Access service.**
- (b) There is no evidence that Brooks was purchasing a WAN. Indeed, there was never any intent to "purchase" a WAN.**

- (c) **Within 30 days or less Order funding for the Internet Access services requested in the 471 Application, specifically FRN – 1171562**
- (d) **Set aside funds to totally fund Brook's request.**

Respectfully submitted,


Nathaniel Hawthorne

Ohio Bar # 0008881
Nathaniel Hawthorne,
Attorney/Consultant, Ltd.
27600 Chagrin Blvd., #265
Cleveland, OH 44122
tel.: 216/514.4798
nhawthorne@earthlink.net

Attorney for
Brooks County Schools

Cc: Paul Watson
Technology Coordinator
Brooks County Schools
489 Barwick Road
Quitman, GA 31643

January 10, 2005

William F. Furniss
Associate Manager
Schools and Libraries Division
Phone: 973-428-7342
Fax: 973-599-6512

Dear William,

Per your request the following is the response to your questions regarding FCC Form 471 Application # **421062**.

(ITEM 1)
For FRN 1117681

SLD Question:

Based on the documentation provided it appears that FRN ^{ca}1117681 includes charges associated with the following on-premise equipment.

*Switches: Cisco 2900 Series, Cisco 3500 Series, Cisco 3508 Series
Routers: Cisco 3600 Series
Server: DNS/DHCP, Web, Terminal, and Email
District Cabling Drops*

Response:

Regarding Application Number 421062, FRN 1117681 does not exist.

The only place the products listed above appear in any PIA responses or Item 21 attachments is FRN 1176956 on Application Number 425571.

FRN 1176956 relates to off-site basic maintenance for the equipment set forth in the PIA of November 1, 2004:

***"Switches: Cisco 2900 Series, Cisco 3500 Series, Cisco 3508 Series
Routers: Cisco 3600 Series
Server: DNS/DHCP, Web, Terminal, and Email ONLY
District Cabling Drops"***

Under SLD rules, maintenance is funded as Internal Connections and we are applying for this FRN (1176956) under the Category of Service as Internal Connections, so the questions above do not apply to FRN 1176956.

If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answers apply (although ANS has on school district premise equipment included in this request it is NOT the equipment listed above for the on-premise equipment for Internet Access):

(Please refer to the attached diagrams from the vendor for the vendor owned on-premise equipment for FRN 1171562 on Application 421062.)

- 1.) Is the leased on-premise equipment an integral component of a Telecommunications or Internet Access service? **YES**
- 2.) Will the leased on-premise equipment be provided by the same service provider that provides the associated Telecommunications Service or Internet Access service? **YES**
- 3.) Does responsibility for maintaining the equipment rest with the service provider? **YES**
- 4.) Will ownership of the equipment transfer to the school or library in the future? **NO**
- 5.) Does the relevant contract or lease include an option for the applicant to purchase the equipment? **NO**
- 6.) Will the leased equipment be used at the applicant site for any purpose other than receipt of the eligible Telecommunications Services or Internet Access of which it is a part? **NO**

Please note that the following two questions are limited to data communications functionality, and do not include technologies limited to traditional voice communication.

- 7.) Will the school's or library's internal data communications network function without dependence on the equipment? **YES**
- 8.) Are there any contractual, technical, or other limitations that would prevent the service provider from using the leased on-premise data communications equipment in part for other customers? **NO**

(ITEM 2)
SLD Question:

Please provide a configuration diagram of the products and services proposed.

The diagram should include the on-premise equipment requested as a part of Internet Access or Telecommunications Services, and all other components, including Internal Connections, that directly connect to these components.

Response:

Regarding Application Number 421062, FRN 1117681 does not exist. If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answer applies:

Diagrams from the vendor are attached. All equipment showing (make and model) on the diagrams attached are on school district locations (as notated on each diagram).

HOWEVER, ALL equipment is vendor owned; including the on-premise equipment that is being leased by Brooks County School District from ANS Connect, Inc. to provide Internet Access service; and there is NO option to purchase the equipment.

(ITEM 3)

SLD Question:

For FRN 1117681, the documentation provided is not sufficient to determine if the Wide Area Network facilities proposed can be made available for other customers of the service provider. Please describe the capability, if any that would allow for sharing of the Wide Area Network infrastructure, as well as the capability, if any that would restrict access to only the applicant.

Response:

Regarding Application Number 421062, FRN 1117681 does not exist. If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answer applies:

Please see the attached letter from the vendor, ANS Connect, for documentation showing availability of the WAN facility to other customers.

Additionally,

- 1) Brooks County School District does not have exclusive access to the WAN;**
- 2) A Lease-purchase agreement does not exist between ANS Connect and Brooks County School District;**
- 3) The WAN is available to other ANS Connect customers; the WAN is not exclusive; this makes the WAN for Brooks County SD cost effective.**
- 4) Here, there is no substantial payment of up-front capital cost; the FCC's rule for amortization is \$500K; here the cost is \$348,000.00**

(ITEM 4)

SLD Question:

For FRN 1117681, appears to potentially involve the construction of new Wide Area Network facilities by the service provider. The documentation provided is not sufficient to determine the amount requested in the funding request(s) for immediate repayment for service provider up-front capital costs, and the total upfront capital costs of the service provider. Up-front capital costs include the costs for equipment and its installation, but not reasonable costs for maintenance.

This funding request may not be eligible for E-rate funding, because it appears to "reach essentially the same result" as a prohibited purchase of WAN facilities, which is contrary to FCC rules. However, we are providing you with an opportunity to submit further information in support of E-rate eligibility, if you feel that the service as proposed is eligible for funding. In framing your response, you may wish to refer to the SLD document Wide Area Network (WAN) Fact Sheet available at <http://www.sl.universalservice.org/reference/wan.asp> (see in particular section 5).

Response:

Regarding Application Number 421062, FRN 1117681 does not exist. If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answer applies:

A new WAN is NOT being constructed. The only construction is to get fiber to Brooks County Schools to deliver the Internet Access service. This is commonly referred to as "last-mile construction".

(ITEM 5)

SLD Question:

For FRN 1117681, the services requested include service provider equipment costs, and/or an upfront or non-recurring (one-time) charge for capital investment by the service provider that is greater than \$500K. Pursuant to the FCC's "Brooklyn" decision, the costs must be amortized over at least a 3-year period. Please send a signed written note as to how many years you would like to amortize this cost. This amortization will be modified on a straight-line basis, i.e., the same dollar amount each year.

Response:

Regarding Application Number 421062, FRN 1117681 does not exist. If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answer applies:

The Annual non-recurring (one-time) charge can be found in Block 5, Application Number 421062 on line 23f in FRN 1171562. This one time charge is to initiate (last-mile construction) Internet Access service to Brooks County Schools.

This amount is \$348,000.00. This amount is not greater than \$500K. Therefore, under the FCC's "Brooklyn" decision, there is no need for amortization since the one time charge here is only \$348,000.00.

(ITEM 6)

SLD Question:

Trenching and Boring are considered to be shared infrastructure. Please provide the number of fibers and entities that are going to be included. Please include only the portion (number of fiber strands) that apply to them.

Response:

Regarding Application Number 421062, FRN 1117681 does not exist. If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answer applies:

The number of fibers being provided is two (2). The entities that are included are Brooks County BOE (HUB), Quitman Elementary School, Walker Street Alternative Middle School, Brooks County Middle School, and Brooks County High School as seen on the attached diagrams.

(ITEM 7)

SLD Question:

Please provide details of what is being maintained

Response:

Regarding Application Number 421062, FRN 1117681 does not exist. If you are referring to FRN 1171562 on Application 421062 which is Internet Access from the vendor ANS Connect, Inc., then the following answer applies:

The activities being performed for the "off-site" maintenance consist of: hourly break-fix maintenance (repair) on an as-needed basis of Internet Access service (switches/fiber) to Brooks County School District.

Sincerely,

Paul Watson
Brooks County School District

Demarc

Quitman County
Elementary School

SM Gigaset
Fiber Connection from BOC

School owned Cisco 3500
Series Switch

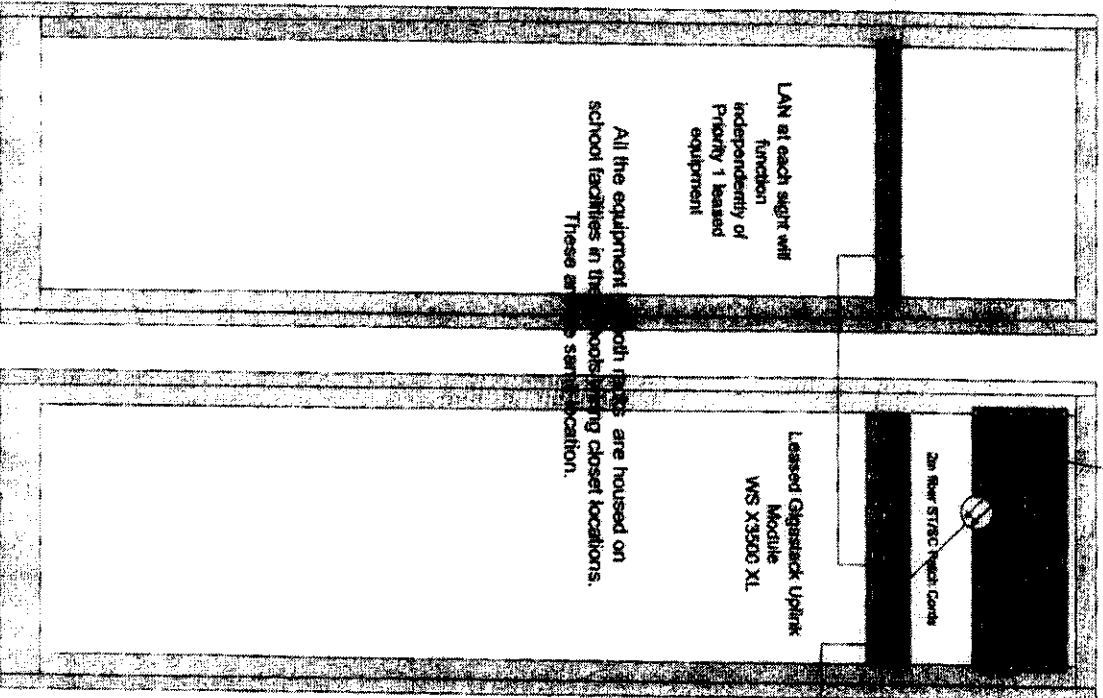
LAN at each sight will
function
independently of
Priority 1 leased
equipment

All the equipment in both racks are housed on
school facilities in the racks being closet locations.
These are in the same location.

Leased Gigaset Uplink
Module
WS X3500 XL

2m Fiber ST/SC Patch Cord

Cisco 3550-12G w/ 2-
WS-G5487 Gig Fiber
Module
WS-C3550-12G
WS-G5487
This is leased priority 1
equipment owned by
ANSI Connect, Inc.



Demarc

Brooks County
Middle School

SM Gigaset
Fiber Connection from BOE



2m fiber ST100 Patch Cord

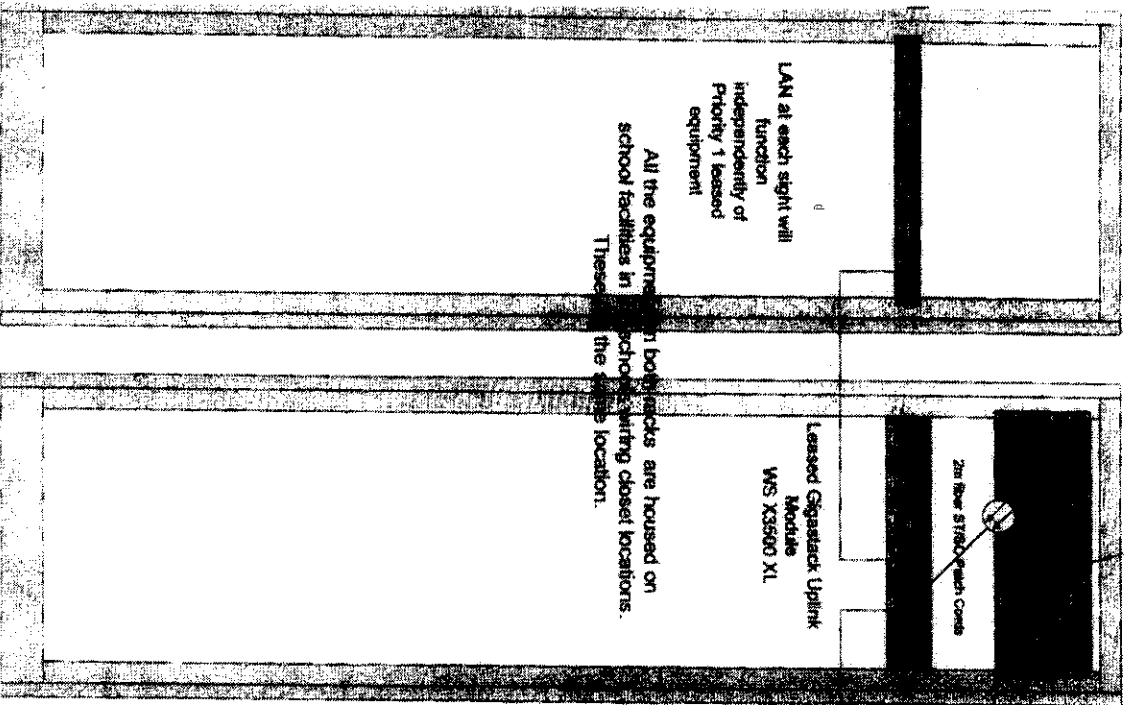
School Owned Cisco 3500
Series Switch

LAN at each sight will
function
independently of
Priority 1 leased
equipment

All the equipment in both racks are housed on
school facilities in school wiring closet locations.
These are the same location.

Leased Gigaset Uplink
Module
WS X3500 XL

Cisco 3500-12G w/ 2-
WS-G5487 51g Fiber
Module
WS-C3500-12G
WS-G5487
This is leased priority 1
equipment owned by
ANS Corred, Inc.



S&B Gigabit
Fiber Connection Contracting to Schools

Demarc

Brooks County BOE

School Owned Cisco 3500
Series Switch

LAN at each site will
function
independently of
Priority 1 leased
equipment

All the equipment
with fiber are housed on
school facilities in the
closest locations.
These are

2m Riser ST/SC Patch Cord

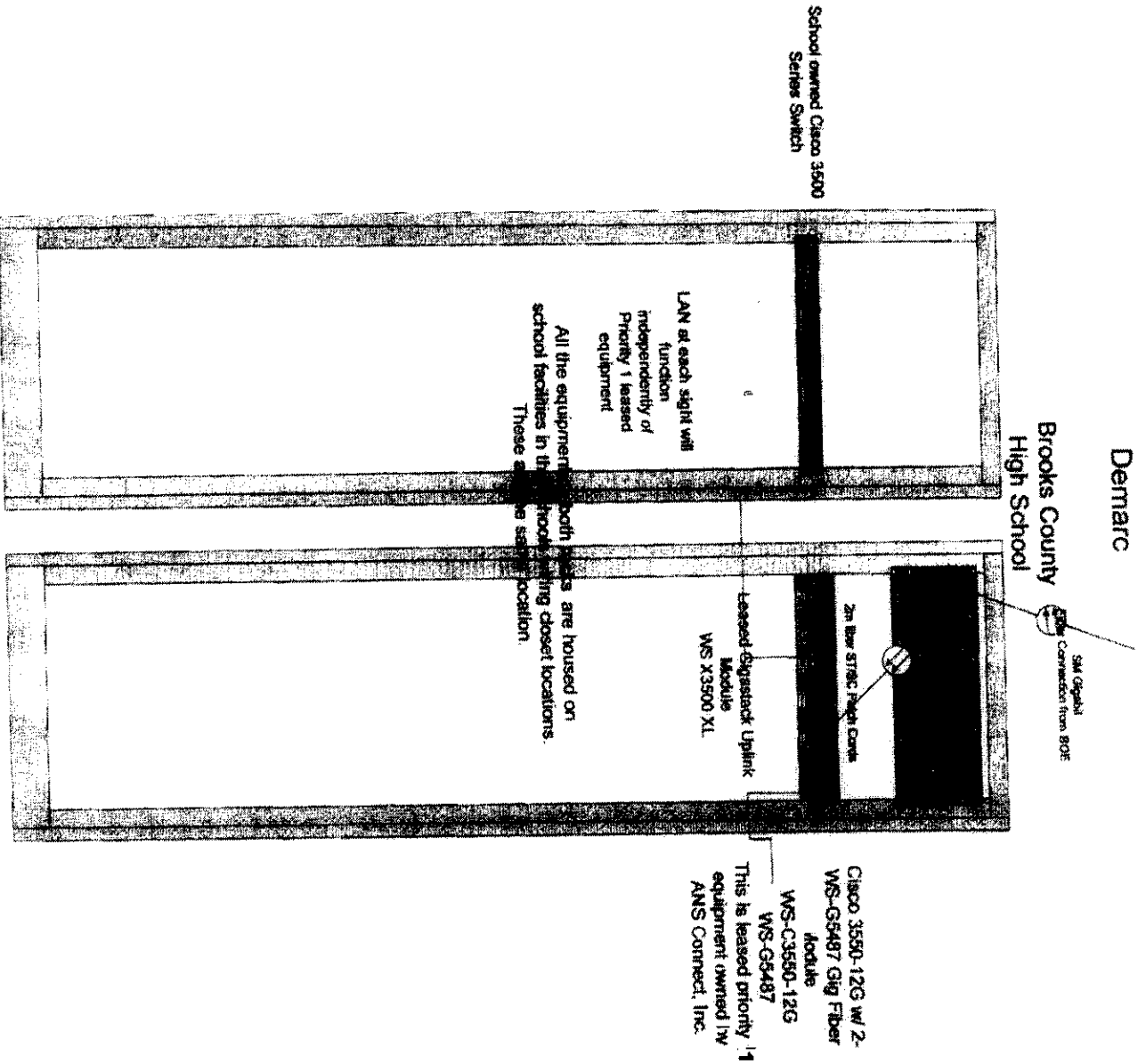
Leased Gigasetack Uplink
Module
WS-X3500 XL

Router
UTP Patch Cord

Cisco 3560-12G w/ 2-
WS-G5487 Gig Fiber
Module
WS-C3560-12G
WS-G5487
This is leased priority 1
equipment owned by
ANS Corneal, Inc.

INTERNET
Priority 1 Service

Property Line



Demarc

